

DIVISION IV

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ROBERT J. GLADWIN, Judge

CA05-1218

AUGUST 30, 2006

CLIFFORD R. ANDERSON
APPELLANT

APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION
[NO. F204129 & F303483]

V.

CUSTOM METAL FINISHERS
LIBERTY MUTUAL INSURANCE CO.
APPELLEES

AFFIRMED

This appeal follows the August 18, 2005 decision of the Workers' Compensation Commission (Commission) reversing the opinion of the Administrative Law Judge (ALJ) and finding that appellant Clifford R. Anderson had failed to prove by a preponderance of the evidence that he was entitled to additional temporary total disability (TTD) benefits or additional medical treatment after appellees Custom Metal Finishers and Liberty Mutual Insurance Company controverted benefits in January 2003. We affirm.

Appellant was employed by appellee Custom Metal Refinishers on March 26, 2002. While reaching over a tank that he was draining with a syphon hose, appellant's unzipped coat became tangled in a large gear, which caused his left arm to be pulled down beside the tank. In order to free himself from the gear, appellant jerked his arm with such force that the entangled coat ripped, and his arm, shoulder, and neck were injured. Initial x-rays revealed a questionable fracture to his left scapula, with possible or partial healing, and no significant displacement; however, the injuries apparently also involved the muscles in his upper arm

and shoulder. His injuries were initially accepted as compensable, and appellees provided treatment, as well as TTD benefits, until January 3, 2003.

Appellant then filed a claim with the Commission, and a hearing was held before an ALJ on February 20, 2004. On June 9, 2004, the ALJ issued an opinion finding in appellant's favor with respect to a request for additional TTD benefits related to the March 26, 2002 injuries for the period extending from January 5, 2003, through a date yet to be determined, as well as all reasonable and necessary hospital expenses arising out of the March 26, 2002 injuries.

The matter was appealed to the Commission, and on August 18, 2005, the Commission issued an opinion reversing the ALJ, finding that appellant's healing period ended no later than December 24, 2002, and concluding that he had failed to prove by a preponderance of the evidence that he was entitled to additional TTD benefits or additional medical treatment after January 2003. From that decision comes this appeal.

In reviewing decisions from the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and we affirm if the decision is supported by substantial evidence. *Swearingin v. Evergreen Lawns*, 85 Ark. App. 61, 145 S.W.3d 830 (2004). Substantial evidence exists if reasonable minds could reach the same conclusion. *Id.* When a claim is denied because the claimant has failed to show an entitlement to compensation by a preponderance of the evidence, the substantial-evidence standard of review requires us to affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Id.* The issue is not whether this court might have reached a different result from that reached by the Commission, or whether the evidence would have supported a contrary finding. *Smith v. County Market/Southeast Foods*, 73 Ark. App. 333, 44 S.W.3d 737 (2001). We will not

reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Id.* It is the Commission's function to determine witness credibility and the weight to be afforded to any testimony; the Commission must weigh the medical evidence and, if such evidence is conflicting, its resolution is a question of fact for the Commission. *DeQueen Sand & Gravel v. Cox*, __ Ark. App. __, __ S.W.3d __ (May 17, 2006).

After appellant sustained the above-described injuries on March 26, 2002, he came under the care of Dr. Michael Langley, who released him to return to light duty work on April 2, 2002. Appellant contended that the job duties he was required to perform as part of the modified job exceeded the physical restrictions imposed by his physicians. As a result of performing those duties, he claims that he re-injured himself on April 2, 2002, which consisted of a burning sensation and swelling in his left arm. At that time, Dr. Langley took appellant off work for an undetermined period of time. An MRI was performed on May 1, 2002, which revealed an impingement syndrome. Appellant then saw Dr. Jason C. Brandt, an orthopedic surgeon, and a subacromial decompression was performed on June 11, 2002. Dr. Brandt's July 24, 2002 report indicated continuing complaints and speculation that appellant might be developing regional pain syndrome. Dr. Brandt and appellant's family physician, Dr. Mary Shields, opined that appellant remained unable to work without significant restrictions. Dr. Brandt later examined appellant on August 12, 2002, and released him to return to light duty work on August 14, 2002, with no overhead activity, right arm work only, and sedentary duty. Appellant attempted to return to work at that time but claimed he was unable to perform even minimal duties because even "right-handed work" worsened the pain in his left arm, and consequently, August 14, 2002, was the last day he worked for appellees.

Appellant continued to complain of pain radiating down his left arm, and Dr. Ron Smith performed electrodiagnostic testing on August 22, 2002. The studies revealed abnormalities in appellant's biceps and deltoid muscles in his left arm, consistent with a left C5 radiculopathy. The studies also revealed mild left median nerve compression at the wrist. A post-myelogram CT scan of his cervical spine that was performed on September 18, 2002, failed to reveal any herniation or stenosis but did reveal minimal degenerative disc disease of the cervical spine. Dr. Terence P. Braden, III, an osteopath, examined appellant on September 27, 2002, and opined:

It appears as though [appellant] has complex region pain syndrome in the left upper extremity. This could have been caused by the traction injury to the left arm itself as the twisting that occurred in a tourniquet-type fashion around the proximal arm. This would also explain the findings on his electrodiagnostic testing by needle exam in the C5 distribution that the deltoid and biceps were both affected.

I think [appellant] should remain out of the work environment until we can ascertain a safe and comfortable return, hopefully with an aggressive and expedient manner.

It is unknown at this time what the further expected course and length of treatment to attain maximum medical improvement will be.

Dr. Shields saw appellant on November 20, 2002, and indicated in her report that he continued to have severe and disabling pain in his left upper extremity and other symptoms, including headaches. She opined that he should be referred to a neurosurgeon and a pain specialist and that he was unable to function normally at that time. A nurse practitioner in Dr. Shields' office examined appellant on December 11, 2002, and reported that he continued to complain of the same problems.

A second, independent evaluation for appellant by Dr. John P. Brophy, a neurosurgeon in Memphis, Tennessee, was performed on December 23, 2002. Dr. Brophy saw appellant on that single occasion, and he opined that the abnormalities in the biceps and deltoid areas could be the result of local trauma related to the tourniquet effect on his arm or the surgical

incision of the left deltoid. Dr. Brophy's report focused primarily on the neck and shoulder complaints, and he opined that appellant suffered from a "[c]ervical/trapezius myofascial pain syndrome without clinical evidence of radiculopathy or neuropathy or radiographic evidence of cervical root compression." Based on his conclusions after the examination, Dr. Brophy opined that: (1) appellant was not a candidate for surgery; (2) he had reached maximum medical improvement; (3) appellant could return to work without restrictions on December 24, 2002. Consequently, appellees terminated appellant's workers' compensation benefits, including all medical treatment, as of January 3, 2003.

Appellant argues that all the medical evidence in this matter, but for the one-time examination and report by Dr. Brophy, indicates that he remained in his healing period and was unable to work at the time appellees terminated his benefits and that he has remained so since that time. He asserts that Dr. Brophy and the Commission focused on his left-shoulder complaints while ignoring the overwhelming evidence suggesting that he suffers from other problems including a complex regional-pain syndrome that is causally related to the March 26, 2002 injury. He contends that the reports of Drs. Brandt, Braden, and Shields controvert Dr. Brophy's report and opinion. Appellant was referred to Dr. Alonzo Burba on June 13, 2003, and in September of that year, Dr. Burba signed a form prepared by appellant's attorney that supported appellant's assertion that he needed further evaluation. Appellant points out that Dr. Shields also referred him to Dr. Thomas Ward, a physical medicine and rehabilitation specialist, who specifically indicated as recently as January 6, 2004, that appellant continued to have severe and disabling problems with his left upper extremity, shoulder, and neck, and that he "is disabled as a result of his injury he sustained to his left shoulder and neck on March 26, 2002."

Appellant maintains that the Commission's decision ignores the damage to the muscles in his upper arm and scapular region, which was established by the objective findings of the electrodiagnostic studies. He claims that the Commission's reliance on Dr. Brophy's report is misplaced because it primarily focused on an evaluation of his cervical condition rather than his overall condition. Appellant cites *Swift-Eckrich, Inc. v. Brock*, 63 Ark. App. 118, 975 S.W.2d 857 (1998), for the proposition that, although the Commission is not bound by medical testimony, it may not arbitrarily disregard witness testimony. He contends that the Commission did just that in relying on Dr. Brophy's opinion in direct contravention of the overwhelming weight of the medical evidence.

Additionally, appellant notes the Commission's apparent conclusion that an injured worker is not entitled to reasonably necessary medical treatment after the end of his healing period and contends that such a conclusion is contrary to well-established law. *See Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983) (holding that respondents remain liable for medical treatment reasonably necessary to maintain a claimant's condition even after the healing period ends). Appellant argues that the fact that he has been treated by several different physicians and that several medications have been prescribed for him since his injury do not, in and of themselves, support a finding that additional medical treatment is not reasonably necessary for the treatment of his compensable injuries. He alleges that he did not suffer from any problems with his shoulder, neck, or left arm prior to March 26, 2002, and that his continuing problems from that injury have been objectively documented. Appellant claims that his previous treatment bears no relevance to his entitlement to reasonably necessary medical treatment related to his condition or for the maintenance thereof. He points out that the standard of review is whether he continues to experience medical problems causally related to his compensable injuries and for which

medical treatment is required and asserts that the overwhelming evidence established that he does; accordingly, he asserts that the Commission's decision is in direct contravention of that evidence.

Appellees contend that the Commission correctly determined that appellant's healing period had ended as of December 24, 2002, some nine months after his injuries. When the underlying condition causing the disability has become stable and if nothing further in the way of treatment will improve that condition, the healing period for which the claimant is entitled to TTD benefits has ended. *See Bray v. Int'l Wire Group*, __ Ark. App. __, __ S.W.3d __ (May 10, 2006). This court recently held that the persistence of pain is not sufficient in itself to extend the healing period. *Id.* Dr. Brophy concluded that "there is no objective reason why [appellant] could not return to work on full duty without restriction as of 24 December, 2002. He will be considered at maximum medical improvement on 24 December, 2002 with a PPI rating of zero percent." Appellees contend that the Commission's decision that appellant is not entitled to additional TTD benefits is supported by substantial evidence.

Dr. Brophy's report answered the primary fact question to be answered by the Commission, specifically, whether there was any objective reason preventing appellant from returning to full duty without restriction as of that date. Dr. Brophy's report reveals that he: (1) took an extensive medical history; (2) analyzed appellant's current medications; (3) noted prior surgery and current appearance; (4) conducted a detailed neurological examination that included an examination of both of appellant's upper extremities, deltoids, biceps, triceps, wrist, fingers, lower extremities, neck, and left shoulder; (5) reviewed multiple prior tests and studies, including a cervical myelogram; (6) recorded his professional impressions; (7) exhibited a thorough knowledge of the AMA guidelines, all prior to his concluding that there

was no indication for surgical intervention. Appellees assert that appellant is seeking an impermissible de novo review from this court simply because he disagrees with the findings of Dr. Brophy's examination. They also contend that appellant's argument that Dr. Brophy's examination was too brief and inadequate in scope is without merit and that the Commission appropriately weighed all of the evidence before it, including the reports of all the physicians, in making its findings. The Commission specifically stated that the record "shows that Dr. Brophy thoroughly and comprehensively examined the [appellant]."

Next, appellees disagree with appellant's assertion that an overall pain complex had been established by the medical records and supported by objective findings. They contend that Dr. Brandt's report related to the July 24, 2002 examination indicated that appellant's range of motion was full, his portal sites were well-healed, and his wounds were well-healed. While he asserted that there "may be a regional pain syndrome type one syndrome going on here," that differential diagnosis was never confirmed by him. Also, appellant relies on Dr. Braden's September 27, 2002 report, which stated that, "It appears as though [appellant] has complex regional pain syndrome in his left upper extremity. This could have been caused by the traction injury to the left upper extremity." The "could have been caused" language is insufficient to prove that it exists or that it is related to the compensable injury. Additionally, Dr. Shields found that appellant's neck was supple without masses and noted that his status was post-work related injury with chronic pain in her March 2003 report. The Commission reviewed the reports and conclusions of Dr. Shields and determined that the preponderance of the evidence did not support all of her conclusions.

Appellant's credibility is called into question as it relates to his lack of motivation to return to work, including his complaints on his last day of work that doing "right-handed

work” made his left arm hurt. He was also inconsistent about his being able to perform tasks within the restrictions and whether appellees violated those restrictions.

The Commission found that “the evidence does not show that any further treatment would improve the claimant’s condition after Dr. Brophy’s release as of December 24, 2002,” after reviewing the records and opinions of all the treating physicians. Based upon our review of the record, the Commission met its duty to weigh the medical evidence and, where the evidence was conflicting, resolve the conflict and translate the medical evidence into findings of fact. *See Searcy Indus. Laundry Inc. v. Ferren*, 82 Ark. App. 69, 110 S.W.3d 306 (2003).

Affirmed.

PITTMAN, C.J., and GLOVER, J., agree.